IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6414 OF 2005.

Nandkumar Digambar Galinde. ... Petitioner.

Versus.

Vijay Prabhakar Galinde and others. ... Respondents.

Shri S.S.Kulkarni for the Petitioner.

Ms.M.M.Kochar for the Respondent.

CORAM : ABHAY S.OKA, J.

DATED : 8th March, 2007.

P.C.:

1. Submissions of the Advocates appearing for the parties were heard on the last date. The Petitioner is the second Defendant in Regular Civil Suit No.131 of 2001 filed by the Respondents Nos.1, 2 and 3. He made an application for amendment of the written statement-cum-counter claim. By the impugned order dated 28th July 2005, the said application has been rejected.

2. The learned Advocate for the Petitioner pointed out that the counter-claim was already made by the Petitioner. However, certain averments were not made due to inadvertence and therefore, the trial Court ought to have allowed the amendment. The learned Advocate appearing for the Respondents submitted that by the proposed amendment, the Petitioner wants to add clauses regarding the cause of action and valuation of the counter-claim. It is submitted by the Respondents that

the very fact that the said amendment was required to be made shows that in the original written statement, the counter-claim was not at all made.

3. I have considered the submissions. I have perused the original written statement filed by the Petitioner. The original written statement is described as "Written Statement and Counter-claim". In paragraph 16 of the written statement, prayera have already been incorporated by way of counterclaim. There are factual averments made in the written statement in support of the counter-claim.

4. By the proposed amendment, the Petitioner desires to add a paragraph which specifically sets out the cause of action for filing counter-claim and other paragraph regarding valuation of the counter-claim for Court fee and jurisdiction. Considering the nature of the amendment, in my view, the learned trial Judge ought to have allowed the application for amendment subject to payment of costs.

5. Hence the following order is passed:

(i) The impugned order dated 28th July 2005 is quashed and set aside. The Application for amendment of the

counter-claim of the Petitioner dated 21st July 2005 is allowed subject to the Petitioner paying costs of Rs.2500/- to the 1st to 3rd Respondents. The amendment to be carried out within four weeks from the date of production of an authenticated copy of this order.

(ii) The amount of costs shall be paid within a period of eight weeks from today and payment of costs will be a condition precedent.

(iii) It will be open for the 1st to 3rd Respondents to file written statement to the amended counter-claim.

(iv) Writ Petition is disposed of in the above terms.

Judge.